

**Introduced by Senator Ducheny**

February 16, 2005

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An act to amend Section 1942.3 of the Civil Code, to amend Sections 568.2 and 568.3 of the Code of Civil Procedure, and to amend Section 50710.1 of the Health and Safety Code, relating to tenancy.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Ducheny. Tenancy.

(1) In an unlawful detainer action to recover possession of a dwelling from a tenant, existing law provides that when certain conditions exist, there is a rebuttable presumption that a landlord has breached habitability requirements.

This bill would include in the conditions described above instances when the dwelling is deemed substandard, as specified, and when the dwelling violates specified limits relating to lead hazards.

(2) Existing law provides that a court may appoint a receiver to take possession of property under a variety of circumstances. Existing law requires that a receiver of real property containing rental housing notify the court of an order or notice to correct substandard conditions, as specified. Existing law also permits a tenant of real property that is subject to receivership, a tenant association, or specified government agencies to file a ~~motion~~ *motion* in a receivership action for instructions from a court in regard to substandard conditions, as specified.

This bill would include in the provisions regarding substandard conditions, described above, violations of limits relating to lead hazards.

(3) Existing law creates a housing program for migratory workers, and provides that if specified operating costs are inadequate, the Department of Housing and Community Development may approve rents for certain migrant farm labor centers that are in excess of those at other migrant farm labor centers assisted by the Office of Migrant Services.

This bill would prohibit the department from increasing rents for residents of any Office of Migrant Services facility to a level that exceeds 30% of the average annualized household incomes of residents of the facility without specific legislative approval. The bill would also make a technical change.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1942.3 of the Civil Code is amended to  
2 read:

3 1942.3. (a) In any unlawful detainer action by the landlord to  
4 recover possession from a tenant, a rebuttable presumption  
5 affecting the burden of producing evidence that the landlord has  
6 breached the habitability requirements in Section 1941 is created  
7 if all of the following conditions exist:

8 (1) The dwelling substantially lacks any of the affirmative  
9 standard characteristics listed in Section 1941.1, or is deemed  
10 and declared substandard pursuant to Section 17920.3 *of the*  
11 *Health and Safety Code*, or violates Section 17920.10 *of the*  
12 *Health and Safety Code*.

13 (2) A public officer or employee who is responsible for the  
14 enforcement of any housing law has notified the landlord, or an  
15 agent of the landlord, in a written notice issued after inspection  
16 of the premises which informs the landlord of his or her  
17 ~~obligations~~ *obligation* to abate the nuisance or repair the  
18 substandard *or unsafe* conditions, ~~or to correct the violation of~~  
19 ~~Section 17920.3 or 17920.10 of the Health and Safety Code~~  
20 *identified under the authority described in paragraph (1).*

21 (3) The conditions have existed and have not been abated 60  
22 days beyond the date of issuance of the notice specified in  
23 paragraph (2) and the delay is without good cause.

1 (4) The conditions were not caused by an act or omission of  
2 the tenant or lessee in violation of Section 1929 or 1941.2.

3 (b) The presumption specified in subdivision (a) does not arise  
4 unless all of the conditions set forth therein are proven, but  
5 failure to so establish the presumption shall not otherwise affect  
6 the right of the tenant to raise and pursue any defense based on  
7 the landlord's breach of the implied warranty of habitability.

8 (c) The presumption provided in this section shall apply only  
9 to rental agreements or leases entered into or renewed on or after  
10 January 1, 1986.

11 SEC. 2. Section 568.2 of the Code of Civil Procedure is  
12 amended to read:

13 568.2. (a) A receiver of real property containing rental  
14 housing shall notify the court of the existence of any order or  
15 notice to correct any substandard or unsafe condition, as defined  
16 in Section 17920.3 or 17920.10 of the Health and Safety Code,  
17 with which the receiver cannot comply within the time provided  
18 by the order or notice.

19 (b) The notice shall be filed within 30 days after the receiver's  
20 appointment or, if the substandard condition occurs subsequently,  
21 within 15 days of its occurrence.

22 (c) The notice shall inform the court of all of the following:

23 (1) The substandard conditions that exist.

24 (2) The threat or danger that the substandard conditions pose  
25 to any occupant of the property or the public.

26 (3) The approximate cost and time involved in abating the  
27 conditions. If more time is needed to approximate the cost, then  
28 the notice shall provide the date on which the approximate cost  
29 will be filed with the court and that date shall be within 10 days  
30 of the filing.

31 (4) Whether the receivership estate is likely to contain  
32 sufficient funds to abate the conditions.

33 (d) If the receivership estate does not contain sufficient funds  
34 to abate the conditions, the receiver shall request further  
35 instructions or orders from the court.

36 (e) The court, upon receipt of a notice pursuant to subdivision  
37 (d), shall consider appropriate orders or instructions to enable the  
38 receiver to correct the substandard conditions or to terminate or  
39 limit the period of receivership.

1 SEC. 3. Section 568.3 of the Code of Civil Procedure is  
2 amended to read:

3 568.3. Any tenant of real property that is subject to  
4 receivership, a tenant association or organization, or any federal,  
5 state, or local enforcement agency, may file a motion in a  
6 receivership action for the purpose of seeking further instructions  
7 or orders from the court, if either of the following is true:

8 (a) Substandard or unsafe conditions exist, as defined by  
9 Section 17920.3 or 17920.10 of the Health and Safety Code.

10 (b) A dispute or controversy exists concerning the powers or  
11 duties of the receiver affecting a tenant or the public.

12 SEC. 4. Section 50710.1 of the Health and Safety Code is  
13 amended to read:

14 50710.1. (a) If all the development costs of any migrant farm  
15 labor center assisted pursuant to this chapter are provided by  
16 federal, state, or local grants, and if inadequate funds are  
17 available from any federal, state, or local service to write-down  
18 operating costs, the department may approve rents for that center  
19 that are in excess of rents charged in other centers assisted by the  
20 Office of Migrant Services. However, notwithstanding any other  
21 provision of law, the department shall not increase rents for  
22 residents of any Office of Migrant Services facility to a level that  
23 exceeds 30 percent of the average annualized household incomes  
24 of residents of the facility without specific legislative  
25 authorization. Prior to approving these rents, the department shall  
26 consider the adequacy of evidence presented by the entity  
27 operating the center that the rents reimburse actual, reasonable,  
28 and necessary costs of operation.

29 (b) At the end of each fiscal year, any entity operating a  
30 migrant farm labor center pursuant to this chapter may establish  
31 a reserve account comprised of the excess funds provided  
32 through the annual operating contract received from the  
33 department, if the department certifies there is no need to address  
34 reasonable general maintenance requirements or repairs,  
35 rehabilitation, and replacement needs of the requesting migrant  
36 farm labor center which affect the immediate health and safety of  
37 residents. The cumulative balance of the reserve account shall  
38 not exceed 10 percent of the annual operating funds annually  
39 committed to the entity by the department. Funds in the reserve  
40 account shall be used only for capital improvements such as

1 replacing or repairing structural elements, furniture, fixtures, or  
2 equipment of the migrant farm labor center, the replacement or  
3 repair of which are reasonably required to preserve the migrant  
4 farm labor center. Withdrawals from the reserve account shall be  
5 made only upon the written approval of the department of the  
6 amount and nature of expenditures.

7 (c) A migrant farm labor center governed by this chapter may  
8 be operated for an extended period prior to or beyond the  
9 standard 180-day period after approval by the department,  
10 provided that all of the following conditions are satisfied:

11 (1) No additional subsidies provided by the department are  
12 used for the operation or administration of the migrant farm  
13 center during the extended occupancy period except to the extent  
14 that state funds are appropriated or authorized for the purpose of  
15 funding all or part of the cost of subsidizing extended occupancy  
16 periods during the first 14 days only.

17 (2) Rents are not to be increased above the rents charged  
18 during the standard 180-day occupancy period unless the  
19 department finds that an increase is necessary to cover the  
20 difference between reasonable operating costs necessary to keep  
21 the center open during the extended occupancy period and the  
22 amount of state funds available pursuant to paragraph (1) and any  
23 contributions from agricultural employers or other federal, local,  
24 or private sources. These contributions shall not be used to  
25 reduce the amount of state funds that otherwise would be made  
26 available to the center to subsidize rents during an extended  
27 occupancy period.

28 (3) In no event shall the rent during the extended occupancy  
29 period exceed the average daily operating cost of the center, less  
30 any subsidy funds available pursuant to paragraph (1) or (2).  
31 With respect to an extended occupancy beyond the standard  
32 180-day period, households representing at least 25 percent of  
33 the units in the center shall have indicated their desire and  
34 intention to remain in residency by signing a petition to the local  
35 entity to keep the center open for an extended period at rents that  
36 are the same or higher than rents during the regular period of  
37 occupancy. Each household shall receive a clear bilingual notice  
38 describing the extended occupancy options attached to the lease.

39 The Legislature finds and declares that because the number of  
40 residents may be substantially reduced during the extended

1 occupancy period, a rent increase may be necessary to cover  
2 operating costs. It is the intent of the Legislature that the public  
3 sector, private sector, and farmworkers should each play an  
4 important role in ensuring the financial viability of this important  
5 source of needed housing.

6 (4) An extended occupancy period is requested by an entity  
7 operating the migrant farm labor center and received by the  
8 department no earlier than 30 days and no later than 15 days  
9 prior to the center's scheduled opening or closing date. The  
10 department shall notify the entity and petitioning residents of the  
11 final decision no later than seven days prior to the center's  
12 scheduled opening or closing date. During the extended  
13 occupancy period, occupancy shall be limited to migrant  
14 farmworkers and their families who resided or intended to reside  
15 at a migrant center during the regular period of occupancy.

16 (5) Before approving or denying an early opening or an  
17 extension and establishing the rents for the extended occupancy  
18 period, both of which shall be within the sole discretion of the  
19 department, the department shall take into consideration all of the  
20 following factors:

21 (A) The structural and physical condition of the center,  
22 including water and sewer pond capacity and the capacity and  
23 willingness of the local entity to operate the center during the  
24 extended occupancy period.

25 (B) Whether local approvals are required, and whether there  
26 are competing demands for the use of the center's facilities.

27 (C) Whether there is adequate documentation that there is a  
28 need for residents of the migrant center to continue work in the  
29 area, as confirmed by the local entity.

30 (D) The climate during the extended occupancy period.

31 (E) The amount of subsidy funds available that can be  
32 allocated to each center to subsidize rents below the operating  
33 costs and the cost of operating each center during the extended  
34 occupancy period.

35 (F) The extended occupancy period is deemed necessary for  
36 the health and safety of the migrant farmworkers and their  
37 families.

38 (G) Other relevant factors affecting the migrant farmworkers  
39 and their families and the operation of the centers.

1 (6) The rents collected during the extended occupancy period  
2 shall be remitted to the department. However, based on financial  
3 records to the satisfaction of the department, the department may  
4 reduce the amount to be remitted by an amount it determines the  
5 local entity has expended during the extended occupancy period  
6 that is not being reimbursed by department funds.

7 (7) The occupancy during the extended occupancy period  
8 represents a new tenancy and is not subject to existing and  
9 statutory and regulatory limitations governing rents. Prior to the  
10 beginning of the extended occupancy period, residents shall be  
11 provided at least two days' advance written notice of any rent  
12 increase and of the expected length of the extended occupancy  
13 period, including the scheduled date of the beginning of the  
14 extended occupancy period and closure of the center. Prior to  
15 being eligible for residency during the extended occupancy  
16 period, residents shall sign rental documents deemed necessary  
17 by the department.

18 (d) The Legislature finds and declares that variable annual  
19 climates and changing agricultural techniques create an inability  
20 to accurately predict the end of a harvest season for the purposes  
21 of housing migrant farmworkers and their families. Because of  
22 these factors, in any part of this state, and in any specific year,  
23 one or more migrant farmworker housing centers governed by  
24 this chapter need to open early or remain open for up to two  
25 additional weeks to allow the residents to provide critical  
26 assistance to growers in harvesting crops while also fulfilling  
27 work expectations that encouraged them to migrate to the areas  
28 of the centers. In addition, if the centers close prematurely or  
29 open late, the migrant farmworkers often must remain or reside  
30 in the areas to work for up to two weeks. During this time they  
31 will not be able to obtain decent, safe, and affordable housing  
32 and the health and safety of their families and the surrounding  
33 community will be threatened.

34 The Legislature therefore finds and declares that, for the  
35 purposes of any public or private right, obligation, or  
36 authorization related to the use of property and improvements  
37 thereon as a 180-day migrant center, an extended use of any  
38 housing center governed by this chapter pursuant to this section  
39 is deemed to be the same as the 180-day use generally authorized  
40 by this chapter.

1 (e) Because of the presumed income levels of the occupants of  
2 migrant farm labor centers, an entity operating a migrant farm  
3 labor center shall be deemed eligible for the California  
4 Alternative Rates for Energy program established pursuant to  
5 Sections 382 and 739.1 of the Public Utilities Code. Any savings  
6 from a reduction in energy rates shall be passed on to the  
7 occupants of the migrant farm labor center.

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